

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MATTHEW FONTENOT, Individually and on
Behalf of All Others Similarly Situated;

Plaintiff,

vs.

MCNEIL INDUSTRIAL, INC.,

Defendant.

4:17CV3113

ORDER

On November 28, 2018, a telephone conference was held regarding a dispute over the content of the notice to be sent to members of this conditionally certified collective action. It was agreed during the conference that the Court would review the parties' proposed notices, and then provide the parties with the notice to be used in this action.

Having reviewed and considered the matter, the approved notice is set forth below.

Dated this 29th day of November, 2018.

BY THE COURT:

s/ Susan M. Bazis
United States Magistrate Judge

NOTICE OF COLLECTIVE ACTION LAWSUIT
FONTENOT, ET AL. v. MCNEIL INDUSTRIAL, INC.

This notice is for the sole purpose of determining the identity of those persons who wish to be involved in this case. Although the United States District Court for the District of Nebraska has authorized sending this notice, the Court has not considered or made any decision as to the merits of Plaintiffs' claims or Defendant's defenses.

TO: All current and former independent contractor welders engaged by McNeil Industrial, Inc., and paid an hourly rate in the last three (3) years.

RE: Collective action lawsuit seeking unpaid overtime and back wages.

DEADLINE TO RETURN CONSENT FORM: «60 days from mailing»

1. Why Are You Getting This Notice?

You received this notice because the Court in charge of this collective action lawsuit has ordered this notice be sent to persons who are identified by McNeil's records as current or former independent contractor welders engaged by McNeil Industrial, Inc., and paid an hourly rate in the last three (3) years.

The Court has "conditionally certified" a collective action lawsuit that may affect your legal rights. This notice is intended to advise you of how your rights under the Fair Labor Standards Act ("FLSA") may be affected by this lawsuit and describe how you can participate in this suit if you want to.

2. What Is This Lawsuit About?

Matthew Fontenot, a former McNeil welder, filed this lawsuit on behalf of himself and other current and former independent contractor welders engaged by McNeil Industrial, Inc., and paid an hourly rate in the last three (3) years. Mr. Fontenot alleges McNeil misclassified its welders as independent contractors and failed to pay them overtime for time worked over 40 hours in a week in violation of federal law. Mr. Fontenot alleges that McNeil owes the welders back wages in the form of unpaid overtime, double damages (liquidated damages), plus his attorneys' fees and costs for himself and all similarly situated workers.

McNeil denies Mr. Fontenot's allegations and has asserted various defenses. McNeil contends its welders have been, and continue to be, properly classified and paid under the FLSA.

The Court has not ruled which party will prevail in this lawsuit but has ordered that this notice be sent to you to inform you of your legal rights and ability to make a claim for unpaid overtime wages and money damages. By returning a Consent to Join Wage Claim Form, you can make a claim to recover damages under federal law during the time period «3 years prior to date of mailing» to the present.

3. What Are Your Options?

If you want to join this lawsuit, you must read, sign, and return the attached Consent to Join Wage Claim Form by **«60 days from date of mailing»**. You may return your Consent to Join Wage Claim Form by filling out the attached form and returning it by mail, email, or fax to:

McNeil Industrial FLSA Case
JOSEPHSON DUNLAP, LLP
11 Greenway Plaza, Suite 3050
Houston, Texas 77046
Telephone: 713.352.1100 · Fax: 713.352.3300
E-mail: info@mybackwages.com

Instead of contacting the above counsel, you may also contact counsel of your choice.

If you do not wish to be a part of the lawsuit, you do not need to do anything. The decision to join is entirely yours.

4. Effect of Joining or Not Joining the Lawsuit.

If you return a Consent to Join Wage Claim form, you will be a part of this case. Therefore, if the welder who brought this lawsuit wins or settles the case, you may receive additional money from McNeil. If this case is not successful, you will receive nothing and you will not be responsible for any of case costs, expenses, or attorneys' fees.

If you decide to join the lawsuit, you may be required to answer written questions under oath, produce documents relating to your claim, testify at an oral deposition under oath and/or testify at trial with regard to your claims against McNeil.

Because the FLSA only allows workers to recover up to the past three (3) years of back wages, eligible workers who do not join this litigation may lose their rights to make a claim for back wages unless such workers bringing a new, separate case.

5. McNeil Cannot Retaliate Against You for Participating in this Lawsuit.

This Court and Federal law prohibits anyone from discriminating or retaliating against you because you join this case. McNeil has agreed to abide by the law in this regard.

If you suspect any retaliation for participating in this suit, please immediately call the attorneys listed below.

6. Your Legal Representation If You Join.

If you choose to join this collective action lawsuit, your attorneys will be Michael A. Josephson and Lindsay R. Itkin of the law firm JOSEPHSON DUNLAP, LLP and Richard J. (Rex) Burch of the law firm BRUCKNER BURCH, PLLC. Their contact information is listed below.

7. How Can You Receive More Information?

If you have any questions about the collective action or your legal rights, you should contact counsel for the collective action directly at:

Michael A. Josephson
Lindsay R. Itkin
JOSEPHSON DUNLAP LAW FIRM
11 Greenway Plaza, Ste. 3050
Houston, Texas 77046
Phone: 713.352.1100
Fax: 713.352.3300
E-mail: info@mybackwages.com

Richard J. (Rex) Burch
BRUCKNER BURCH PLLC
8 Greenway Plaza, Ste. 1500
Houston, Texas 77046
Phone: 713.877.8788
Fax: 713.877.8065
Email: frontdesk@bucknerburch.com

You should not contact McNeil or McNeil's attorneys about this lawsuit or seek advice from them on whether you should participate.

You should not contact the Court to discuss this matter.

8. You Have Sixty (60) Days to Join this Lawsuit.
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Your determination of whether to take action should be made promptly. Because the law only allows a person to recover up to three (3) years of back wages from the date the Consent to Join Wage Claim Form is filed, time is of the essence in submitting this form. All consent forms must be received no later than **«60 days from date of mailing»**, which is sixty (60) days after this Notice was mailed to you. A Consent to Join Wage Claim Form is enclosed with a self-addressed stamped envelope.

**CONSENT TO JOIN COLLECTIVE ACTION LAWSUIT AGAINST MCNEIL
INDUSTRIAL, INC.**

Printed Name: _____

1. I hereby consent join the collective action lawsuit filed against McNeil Industrial, Inc. ("McNeil") to pursue my claims of unpaid overtime during the time that I worked with McNeil.
2. I understand that this lawsuit is brought under the Fair Labor Standards Act, and I consent to be bound by the Court's decision.
3. I designate the law firms and attorneys at JOSEPHSON DUNLAP, LLP and BRUCKNER BURCH PLLC as my attorneys to prosecute my wage claims.
4. I consent to having Plaintiff Matthew Fontenot and Plaintiff's Counsel make all decisions regarding the litigation, the method and manner of conducting this litigation, the terms of any potential settlement of this litigation, releasing of claims, entering into an agreement with Plaintiff's Counsel regarding attorneys' fees and costs, and all other matters pertaining to the lawsuit.
5. If needed, I authorize the Plaintiff's lawyers to use this consent to re-file my claim in a separate lawsuit or arbitration against McNeil.

Signature: _____

Date Signed: _____

Please print or type the following information, which will be kept confidential:

Address

City/State/Zip

Home Telephone Number

Cell Phone Number

E-mail Address

Estimated Dates of Work for McNeil

Positions Held with McNeil

Locations Worked for McNeil

RETURN THIS FORM BY MAIL, EMAIL, OR FAX TO:

McNeil Industrial FLSA Case
JOSEPHSON DUNLAP LAW FIRM
11 Greenway Plaza, Suite 3050
Houston, Texas 77046
Telephone: 713.352.1100 · Fax: 713.352.3300
E-mail: info@mybackwages.com

PROPOSED EMAIL TO PUTATIVE CLASS MEMBERS

Subject: Notice of collective action lawsuit against McNeil Industrial, Inc.

Dear Welder:

Attached is the Court-authorized Notice regarding a collective action lawsuit against McNeil Industrial, Inc. You are receiving this e-mail because McNeil's records indicate that you are eligible to participate in this collective action lawsuit seeking to recover unpaid overtime wages and your rights may be affected by its outcome. The attached Notice explains the steps you need to take if you want to join. You can review and sign the forms to join the case here «hyperlink».

If you have any questions, please feel free to contact me at «phone» or by e-mail at «email».

«Signature Block»